IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:12.06.2006

CORAM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM
AND
THE HON'BLE MR. JUSTICE J.A.K. SAMPATHKUMAR

WRIT APPEAL Nos.717 & 718 of 1999

..

M/s. Export Credit Guarantee Corporation
Of India Ltd., rep. By its Managing Director
Express Towers-10th Floor
Nariman Point, Mumbai 21. .. Appellants in both the appeals.

vs.

1. A. Jaya Kumar

2. State Bank of India
Marthandam rep. By its
Branch Manager
Marthandam
K.K. District. .. Respondents in W.A.No.717/1999

1. A. Vimal Kumar

2. Canara Bank
Kuzhithurai rep. By its
Branch Manager
Kuzhithurai
K.K. District. .. Respondents in W.A.No.718/1999

Writ Appeals filed under Clause 15 of the Letters of Patent against the common order of the learned Judge Mr. Justice K. Govindarajan, dated 10.03.1999 made in W.P.Nos.4799 and 4800 of 1998.

WP.No.4799/98:- To issue a writ of certiorarified Mandamus, calling for the records relating to the 1st respondent circular No.859 dated 6.5.1994 and quash the same as far as it relates to the petitioners concern Jaya cashew and to direct the 1st respondent to extend guarantee to Jaya cashew Industry without linking in to the Annai cashew industries and its owner P.Antony i.e. Petitioner's father and the other.

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WP.No.4800/98:- To issue a writ of certiorarified Mandamus, calling for the records relating to the 1st respondent circular No.859 dated 6.5.1994 and quash the same as far as it relates to the petitioner and to direct the 1st respondent to extend guarantee to the petitioner's Vimal cashew Industry Arasakulam thenkaipatnam Kanyakumari District on his individual merit and record without linking him in any manner to Annai cashew industry Nellikaivilai, Thikurichipost, kanyakumari District or its proprietor Mr. Antony, or any of his guarantees.

For appellants :Mr.S. Krishna Srinivasan
For M/s.Ramasubramaniam Associates.
For respondents :Mr.R. Srinivas for R.1 in both the appeals.

Mr. V. Karunakaran for R.2 in WA.717/99.
No appearance for R.2 in WA.718/99.

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COMMON JUDGMENT

(Judgement of the Court was delivered by P. SATHASIVAM,J.)

Export Credit Guarantee Corporation of India Limited, aggrieved by the common order dated 10.3.1999 in W.P.Nos.4799 & 4800 of 1998 quashing the circular dated 6.5.1994 in so far as it relates to the inclusion of the writ petitioners in the Specific Approval List, has filed the above writ appeals.

2. Mr.Jayakumar and Mr.Vimalkumar are sons of P.Anthony who is the proprietor of M/s.Annai Cashew Industries, Kanyakumari District. Aggrieved by the Circular No.859 dated 6.5.1994 of the Export Credit Guarantee Corporation of India Limited, (a Government of India Enterprises), Bombay-21 including both the writ petitioners, viz., Jayakumar and Vimalkumar in the "Specific Approval List" filed W.P.Nos.4799 of 1998 and 4800 of 1998 respectively. Since the facts and the questions raised in both the petitions are similar and one and the same, we shall dispose of both the appeals by this common judgment.

3. For convenience, we shall refer the case of the petitioner in W.P.No.4799 of 1998.

(a) According to the petitioner A.Jayakumar, his father P.Anthony is the Proprietor of Annai Cashew Industries in Nellikaivilai, Thirukurichi Post, Vilvancode Taluk, Kanyakumari District. The said industry was started in the year 1984 by his father. M/s.Export Credit Guarantee Corporation of India (ECGC) is a company, wholly owned by the Government of India. Besides other

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duties, it is expected to provide financial guarantee to banks in India to protect them from risks of loss involved in their extending financial support to exporters and in the event of an exporter committing default, ECGC would make good a major portion of the loss. In the event of any such default, the defaulters' names would be included in the Specific Approval List and thereafter no bank can grant credit facilities to such persons or defaulters without the approval of ECGC. In such cases, the Guarantors/partners/Directors of the defaulters and their sister concerns are also included in the Specific Approval List.

(b) All the cashew industries buy cashew nuts locally and also import cashew nuts from Africa and produce cashew kernels. The product is mainly exported to foreign countries. Hence, cashew related industries require the services and assistance of ECGC and nationalised banks like the second respondent. The second respondent bank offered to extend credit facilities to the petitioner for the purpose of export and without the guarantee to be extended by ECGC, the bank cannot advance any loan or undertake an obligation to negotiate the documents on behalf of the exporter. While so, the second respondent had addressed a letter to ECGC seeking necessary guarantee for extending export credit facilities to the writ petitioner. By Circular No.859 dated 6.5.1994, ECGC informed the second respondent bank that Jaya Cashew Industries, a sister concern of Annai Cashew Industries had been included in the Specific Approval List. The implication of this circular is that no bank in India can grant export credit facilities to the petitioner or their concern without the approval of ECGC. Though his father is the proprietor of Annai Cashew Industries, he does not have any interest financially or otherwise in the said industry. In such circumstances, ECGC is not justified in including the petitioner concern, namely, Jaya Cashew industries in the Specific Approval List. Having no other effective remedy, the petitioner filed the writ petition on various grounds.

4. W.P.4800 of 1998 is filed by his brother A.Vimalkumar raising similar contentions.

5. ECGC, first respondent in both the writ petitions filed a separate, but identical counter affidavits. The stand of ECGC is briefly stated hereunder:

ECGC is engaged in providing financial guarantee to the banks and other institutions to protect them from risks undertaken by them in granting financial assistance to exporters. In the event that an exporter defaults in payment and the bank is unable to recover the sume, ECGC makes good the loss to the bank. M/s.Annai Cashew Industries owned by P.Anthony was one such exporter who had sought for certain financial assistance from the Indian Overseas Bank, Melpuram Branch for packing credit, however the said company did not repay the advance availed. As per the terms and conditions prevalent in ECGC, once a person has

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defaulted in repayment, the amount is to be recovered from the defaulter or from any other sister concern or any such concern wherein which the defaulter has interest, besides from the securities and or guarantors so provided by the defaulter. Based on the information given by the bank, the insurance is granted by ECGC. As per the requirements, the details regarding Jaya Cashew Industries and Vimal cashew Industries along with J.V.Cashew Industries, sister concerns of the said Annai Cashew Industries were furnished. Since Annai Cashew Industries defaulted in repayment, the other sister concerns were also required to clear the debt and till such debt is cleared, the insurance cover granted by ECGC cannot be availed by any bank for loans issued to the parties. Since M/s.Annai cashew Industries committed default, the petitioners being sister concerns of the said Industry have been placed in the Specific Approval List. Their action is in accordance with the terms of contract agreed to by all the parties.

6. By the common order dated 10.3.1999, learned Single Judge, after finding that inclusion of petitioners' names in the Specific Approval List amounts to blacklisting and in the light of the fact that the petitioners were not given opportunity before the communication of the Circular dated 6.5.1994, quashed the same and allowed both the writ petitions. Questioning the said common order, ECGC has filed the present appeals.

7. Heard Mr.S.Krishna Srinivasan, learned counsel for the appellant and Mr.R.Srinivas, learned counsel for the contesting first respondent in both the appeals.

8. The only point for consideration in these appeals is whether the inclusion of names of the writ petitioners' concerns in the Specific Approval List amounts to blacklisting or not?

9. It is not in dispute that the main object of the ECGC is to provide financial guarantee to the banks and other institutions to protect them from risks undertaken by them in granting financial assistance to exporters. In the event that an exporter defaults in payment and the bank is unable to recover the same, ECGC would make good the loss to the bank. In this way, M/s.Annai Cashew Industries owned by P.Anthony who was one such exporter had sought for financial assistance from the Indian Overseas Bank, Melpuram Branch for packing credit. Since the said company did not repay the advance availed, as per the terms and conditions and schemes and guidelines of ECGC, the writ petitioners being sister concerns of the said Industry were placed in the Specific Approval List.

10. Now, let us consider whether the inclusion of any concern in the Specific Approval List is similar to blacklisting the same. The primary goal of ECGC is to support and strengthen the export promotion drive in India by providing a range of credit risk, insurance covers to exporters against loss in export of

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goods and services and also by offering guarantees to banks and financial institutions to enable the exporters to obtain better facilities from them. Among various clauses relating to packing credit guarantee, Clauses 11(1) and 11(2) are relevant, which read as under:

> "11.1. What is SAL? Specific Approval List (SAL) (maintained by the Corporation and circulated among all banks) contains names and addresses of the exporters to whom packing credit advances granted by a bank can be covered under WTPCG only if the Corporation has given its approval in writing. The list provided to banks is an important source of information for identifying exporters who have defaulted. The list is mainly aimed at advising banks to exercise caution while dealing with such exporters.
>
> 11.2 Need for placing an export in SAL.
>
> Generally speaking the necessity for placing an exporter in SAL may arise in cases where:
>
> (i) Exporter has defaulted to a bank: This default to a bank may be reflection of the financial difficulties of the exporter or some serious problems in his business.
>
> (ii) A claim has been filed under a guarantee on account of the exporters by any bank: The intention of the Corporation is to avoid undertaking further liability on account of the exporter.
>
> (iii) The exporter is purported to be involved in a fraud: When it comes to the knowledge of the Corporation that an exporter is involved in fraud, he ceases to be a desirable customer and all banks have to be cautioned in regard to the potential danger in dealing with such an exporter.
>
> (iv) The exporter is in financial difficulties: If an exporter is in serious financial difficulties, a close monitoring of his account is called for.
>
> While placing the name of an exporter under SAL, Corporation may also consider including the names of sister concerns as the financial difficulties of the exporter might adversely affect their financial position as well. Names of proprietor/partners and guarantors/directors are also included in SAL with a view to prevent them from obtaining finance in the names of some other concerns floated by them."

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In view of the above clauses and of the fact that M/s.Annai Cashew Industries committed default, the petitioners being sister concerns, ECGC included their names in the Specific Approval List.

11. Mr.Krishna Srinivasan, learned counsel appearing for the appellant/ECGC would contend that the learned Single Judge was not correct in concluding that the inclusion of the petitioners in the Specific Approval List would amount to blacklisting the concerns of the petitioners. According to him, by putting the petitioners in the Specific Approval List, ECGC had not disentitled them from obtaining export related advances from its bankers and its bankers could still extend advances to them either after obtaining the Specific Approval from the ECGC or the bankers could still extend the export related advances to the exporters without obtaining guarantee from the ECGC. He also contended that the scheme, namely, inclusion in the Specific Approval List is an additional safeguard worked out in consultation with the export concerns. He further contended that inasmuch as ECGC is providing guarantee to the bank, in the event of default by the exporter, the ECGC is entitled to take reasonable steps to include the name of defaulter as well as its sister concerns in the Specific Approval List.

12. On the other hand, Mr.R.Srinivas, learned counsel appearing for the contesting first respondent/writ petitioner in each appeal submitted that inasmuch as the inclusion of the petitioners' name in the Specific Approval List would tantamount to blacklisting their concerns and they cannot avail financial assistance for export from banking institutions, they are entitled to an opportunity of being heard before the issuance of impugned circular dated 6.5.1994.

13. It is not in dispute that M/s.Annai Cashew Industries after getting guarantee from ECGC availing export facilities, committed default. Though it is stated that the writ petitioners have nothing to do with M/s.Annai Cashew Industries, it is not in dispute that it is the concern of their father, by name, P.Anthony. It is also seen that while availing loan for M/s.Annai Cashew Industries as per the requirements, M/s.Jaya Cashew Industries and M/s.Vimal Cashew Industries along with M/s.J.V.Cashew Industries were shown as sister concerns of the said Annai Cashew Industries. In such circumstances, as per Clause 11.2 of Guidelines of ECGC is within its power to include the names of sister concerns in the Specific Approval List. In view of the terms of contract, as rightly argued by Mr.S.Krishna Srinivasan, learned counsel for ECGC, it is reasonable to accept that the object and purpose of the Circular aims to minimise the risk and if the ECGC is required by the banks to provide insurance cover against such advances made to the exporter, due and proper care should be taken in this regard.

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14. A careful scrutiny of the impugned communication shows that it, in no way, prohibited the banks from advancing funds or loans to the petitioners and it required the petitioners to obtain specific and prior approval of ECGC, if the banks sought for any insurance cover to credit facilities. In such circumstances, the petitioners have no right to prevent ECGC from taking whatever steps it should take so as to safeguard and minimise the risk in their business as a measure of prudence and proper planning in the discharge of their commercial dealings involving public funds. The purpose of including the names of petitioners in the Specific Approval List is otherwise called, caution list is to include the names of persons about whom extreme care and caution has to be taken for variety of reasons and that inclusion in the list is for the purpose of the Corporation itself in the exercise of its discretion which it is called upon to exercise. Further, when such list is only meant for the guidance of the ECGC itself, it is difficult to understand as to how a person can complain about the cautious conduct of the ECGC in deciding beforehand that whenever any such case comes up for consideration, it should exercise greater care and caution. The right of the appellant to issue instructions to the second respondent bank as well as other banks cannot be disputed and therefore the petitioner cannot complain that the principles of natural justice had been violated by the appellant while issuing the said communication. Likewise, there is also no case of blacklisting of the petitioners' concerns. As rightly pointed out, it is not possible for the court to determine whether a particular unit is viable, because determination would require examination of many facts including the financial implications and the Courts are not in a position and are not called upon to undertake such a detailed exercise. It is necessary for the Court to leave such discretion in favour of the financial institutions like, ECGC to determine whether an unit is viable or otherwise and the courts should be extremely slow in interfering with those matters. In other words, the discretion exercised by the financial institutions is not to be interfered with unless it is made with oblique motive or for extraneous purposes or considerations.

15. It is brought to our notice that the impugned circular No.859 dated 6.5.1994 shows not only the writ petitioners,but also innumerable parties have been put on the Specific Approval List or caution list and this is not a case where the petitioners have been singled out. On the facts and materials placed, we find that the Specific Approval List or caution list cannot be equated with the blacklisting. In such a circumstance, the decision of the Apex Court in Southern Painters v. Fertilizer & Chemicals, Travancore Ltd. [1994 (Supp.2) SCC 699] relied on by the learned Single Judge is not applicable to the case on hand.

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16. Learned counsel appearing for the appellant very much relied on the decision of the Single Judge of this Court dated 24.4.2000 made in W.P.No.19462 of 1999. In that case, M/s.Vamadev Exports, Tiruppur sought for writ of Mandamus directing ECGC for removal of its name from the Specific Approval List and also prayed for further direction to ECGC and Indian Bank, Avinashi to forbear them from insisting 2% cut back on all the export bills favourably negotiated of their firm M/s.Vamadev Exports. After considering the schemes and guidelines of ECGC and after finding that it is not a case of blacklisting and neither capricious, nor arbitrary act and no breach of principles of natural justice, the learned Single Judge dismissed the said writ petition.

17. Learned counsel for the appellant also pressed into service the Division Bench decision of the Kerala High Court dated 29.9.1989 in W.A.No.767 of 1989 wherein the Division Bench, while deciding the very same question between cashew trader and ECGC, Ernakulam-Cochin, after finding that the purpose of including the names of persons in the Specific Approval List is to indicate the names of customers about whom extreme care and caution has to be taken for variety of reasons, confirmed the order of the learned Single Judge and dismissed the writ appeal filed by the cashew trader/petitioner. Though the above judgment is very brief, however, it is clear that when the guarantee is required to be given in favour of the persons to be included in the list, the Corporation has to examine with greater amount of care and caution. The Division Bench also observed that the inclusion of such person in the list is for the purpose of Corporation, ECGC itself in regard to the exercise of its discretion which it is called upon to exercise. They further held that, "in these days when acting with utmost carelessness is the order of the day if some procedure has been established for dealing with certain amount of care and caution, we fail to see how this Court can come in the way of such a salutary procedure being followed by a Government.".

18. Learned counsel for the appellant has also relied on another Division Bench decision of Bombay High Court (Goa Bench at Banaji) dated 14.9.1992 in W.P.76 of 1990. Identical communication/circular of ECGC, Mumbai was challenged in the said writ petition by some of the exporters. The contentions that are raised before us were raised before the Division Bench. The Division Bench after finding that the communication/circular has no way prohibited the banks from advancing funds or loans to the petitioners and all that was sought from them by the respondent No.1/ECGC was to obtain the prior and specific approval if the said bank required them to furnish any insurance cover against the credit facilities involving the petitioners, concluded thus:

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"24. This being the position it is clear that the petitioners have no right to prevent the 1st respondent to take whatever steps they should feel like devising so as to safeguard and minimize the risk in their business as a measure of prudence and proper planning in the discharge of their commercial dealings involving public funds. Thus the fact of the 1st respondents having addressed their disputed communication cannot or should not be reasonably defaulted in the context of the circumstances which appear to have motivated and/or prompted them to ensure the safety of their business and for the specific purpose of streamlining the risk which they are covering in relation to the loans, transactions and facilities granted by the respondents Nos.2 to 4 to the petitioners' Companies and others also in similar position.

25. This right of the respondents No.1 to exercise proper care and caution has been otherwise unmistakably acknowledged in the decision of the Kerala High Court in an unreported case of Seema Cashew Traders vs. Manager, Export Trade Corporation of India Ltd., and others dated 29th September, 1989 in Writ appeal No.767/89 which has held that the purpose of including the names of persons in the Caution List is to include the names of persons about whom extreme care and caution has to be taken for a variety of reasons and that inclusion in the List is for the purpose of the Corporation itself in the exercise of its discretion which it is called upon to exercise. Therefore the prayer for quashing the name of the appellant from the said List falls outside the scope of writ jurisdiction of the Court as it is neither for enforcement of the statutory right or any fundamental right. The Court also observed when such List is only meant for the guidance of the Corporation itself it is difficult to understand as to how a person can complain about the cautious conduct of the Corporation in deciding before hand that whenever any such case comes up for consideration it should exercise greator care and caution. Therefore no relief to prevent the Corporation from exercising greater care and caution is admissible. "

The Division Bench further held that there is no case of blacklisting of the petitioners and it is necessary for the court to leave the discretion in favour of the financial institutions to determine whether an unit is viable or otherwise and the Court should be extremely slow in forcing the financial institutions to

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advance public funds to private party on an assumption that the unit would be viable. The concluding remarks at para-30 are also relevant:

> "30. We are satisfied that maintaining "Caution List" is a policy matter of the 1st respondent. We have seen two books where innumerable parties have been also put on "Caution List" and this is not a case where the petitioners have been singled out. On facts we also find that "Caution List" or "Prior Approval List" cannot be equated with blacklisting and therefore the ratio laid down by the Supreme Court in M/s. Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and another (AIR 1975 SC 266) is not applicable. The question in the case cited supra was that the tenderer was put in the black list with the result there was no question of accepting his tender. The case at hand is entirely different where the request for cover of insurance was to be decided on merits of the application."

19. In the earlier part of our judgment, we have extracted Clause 11.1 and Clause 11.2 of the Schemes and Guidelines of ECGC. We also referred the fact that while availing guarantee from ECGC, the required particulars of not only Annai Cashew Industries were furnished, but also the details of Jaya Cashew Industries and Vimal Cashew Industries along with J.V.Cashew Industries, the sister concerns of Annai Cashew Industries, were given. On the materials placed, we are of the view that the Specific Approval List or caution list cannot be equated with blacklisting and therefore we are unable to accept the argument of learned counsel for the writ petitioners as well as the conclusion arrived at by the learned Single Judge. On the other hand, we are in respectful agreement with the view expressed by the Division Benches of Kerala and Bombay High Courts referred above and we refer with approval the order of learned Single Judge of this Court dated 24.4.2000 in M/s. Vamadev Exports vs. ECGC, Coimbatore.

20. Mr.R.Srinivas, learned counsel appearing for the contesting first respondent/writ petitioners heavily relied on the following decisions of the Supreme Court in support of his claim that without notice or opportunity, the inclusion of the petitioners' names in the Specific Approval List is bad.

1. A.I.R. 1975 S.C. 266 (E.E.&C. Ltd. vs. State of West Bengal)
2. 1994 Supp.(2) S.C.C. 699 (Southern Painters vs. Fertilizers & Chemicals Travancore Ltd., and another)
3. 2003 (4) S.C.C. 557 (Canara Bank and others vs. Debasis Das and others)

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4. A.I.R. 1990 S.C.1031 (Mahabir Auto Stores vs. Indian Oil Corporation)
5. 1995 (6) S.C.C. 289 (M.J. Sivani vs. State of Karnataka)
6. 2003 (2) S.C.C. 673 (Onkar Lal Bajaj and others vs. Union of India and another)
7. 2004 (3) S.C.C. 553 (ABL International Ltd., vs. Export Credit Guarantee Corporation of India Ltd.,)

21. The first two decisions A.I.R. 1975 S.C. 266 and 1994 (Supp.2) SCC 699, namely, (cited supra) relate to blacklisting of contractor. It is true that there is no dispute that blacklisting will have the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for the purposes of gains. The decisions also revealed that the person concerned should be given an opportunity to represent his case before he is put on the blacklist. On appreciation of materials placed, we have already held that the inclusion of names in the Specific Approval List or caution list would not amount to blacklisting; hence, those decisions are not applicable to the case on hand.

22. In 2003(4) SCC 557 and in AIR 1990 SC 1031 (cited supra) also the Honourable Supreme Court has held that even an administrative order which involves civil consequences must be consistent with the rules of natural justice.

23. In 1995(6) SCC 289 (cited supra), their lordships have held that every action of the State or an instrumentality of the State must be informed by reason. They further held that actions uninformed by reason may amount to being arbitrary and liable to be questioned under Article 226 or 32 of the Constitution of India and the action must be just, fair and reasonable. In those cases the question sought to be decided was with regard to regulation of the video games under the Mysore Police Act, 1963 and Madras City Police Act, 1888 as well as order passed by the Government in G.O.Ms.No.166-0 dated 18.1.1993. First of all, the facts therein have nothing to do with the present case and secondly, the Supreme Court upheld the orders passed by the High Court and dismissed the appeals filed by persons running video games.

24. By relying on the decision of the Supreme Court reported in 2003(2) SCC 673 (cited supra), it is contended that the role model for governance and decision taken thereon should manifest equity, fair-play and justice. The batch of cases relates to distribution of state largesse and allotment of retail outlets of petroleum products. While there is no dispute regarding the proposition of law, on going through the factual details, we are of the view that the ratio decidendi is not applicable to the case on hand.

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25. Finally, learned counsel for the writ petitioners heavily relied on 2004 (3) SCC 553 (cited supra). The case relates to the maintainability of a writ petition under Article 226 of the Constitution against Export Credit Guarantee Corporation of India when disputed questions of fact are involved. Though learned Single Judge of the Calcutta High Court quashed the letters of repudiation issued by ECGC and allowed the writ petition, the appellate Bench of the same High Court reversed the findings of the learned Single Judge and held that the claim of appellant involving disputed questions of fact cannot be adjudicated in a writ proceedings under Article 226 of the Constitution and set aside the judgment of the learned Single Judge. A perusal of the Supreme Court judgment shows that the main argument relates to the maintainability of the writ petition under Article 226 of the Constitution of India in respect of disputed questions of fact. Their Lordships also discussed and arrived at the conclusion that ECGC is an instrumentality of State discharging public function.

26. After detailed discussion in para-27, their Lordships have framed the following legal principles as to the maintainability of the writ petition.

> "27. (a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.
> (b) Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.
> ( c ) A writ petition involving a consequential relief of monetary claim is also maintainable.
>
> 28. However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the Court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power. (See Whirlpool Corpn. Vs. Registrar of Trade Marks [1998 (8) SCC 1] . And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so

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as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction. "

27. On facts, the Honourable Supreme Court concluded that the policy of insurance covering the risk of the appellants, viz., ABL International Limited and another was issued by the first respondent (ECGC) after seeking all required information and after receiving huge sums of money as premium exceeding Rs.16 lakhs and the terms of the policy do not give room to any ambiguity as the risk covered by ECGC. They also found that there is no allegation that the contracts in question were obtained either by fraud or misrepresentation. In such factual situation, the Apex Court accepted the order of the learned Single Judge and reversed the conclusion arrived at by the appellate Bench of the Calcutta High Court. In such circumstances, we are of the view that though in the said decision, where ECGC was the first respondent, neither the High Court, nor the Hon'ble Supreme Court had an occasion to consider the effect of inclusion of the defaulters or their sister concerns in the Specific Approval List. As said earlier, the Honourable Supreme Court elaborately dealt with the maintainability of the writ petition on the facts and circumstances of that case and also finally considered the terms of the contract and policy of insurance covering the risk of the appellants therein, accepted the case of ABL International Ltd., and reversed the conclusion of the appellate Bench of the Calcutta High Court; hence, the same is also not helpful to the stand taken by the writ petitioners.

28. The perusal of the impugned order shows that the learned Judge proceeded on the footing that the inclusion of the petitioners' names in the Specific Approval List would amount to blacklisting and without further discussion by referring the judgment in 1994 (Supp(2) SCC 699 (cited supra), set aside the circular dated 6.5.1994 and allowed the writ petition. In view of our discussion in the earlier paragraphs, we are unable to accept the reasonings of the learned Judge. In addition to the above mentioned reasons, we are also satisfied that by putting the petitioners on the Specific Approval List, the appellant/ECGC had not disentitled them from obtaining export related advances from their bankers and their bankers could still extend export related advances to the petitioners either after obtaining the specific approval of the appellant Corporation or the bank could still extend the export related advances to the petitioners without obtaining the guarantee from the appellant corporation. As pointed out earlier, the ECGC has not branded the writ petitioners as defaulters. As rightly pointed out, the inclusion of their names in the Specific Approval List only indicates that there are prima facie circumstances that warrants the collection of additional information before the risk could be accepted for cover. As discussed earlier, when the petitioners approached the second respondent bank for assistance and when the second respondent in

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turn sought for risk cover, the ECGC had to necessarily assess the credit risk factors and the list of exporters, i.e., potential operators with whom ECGC would like to be more cautious and hence, it cannot be equated to blacklisting. As said earlier, ECGC is a Government of India Enterprises established to provide insurance covers to exporters and cover their credit risk on overseas buyers and to their bankers over their credit risk on export financing to Indian exporters, has to necessarily have a system to assess the credit risks that are offered to them for cover and where it is prima facie a bad risk, it will not be proper for them to accept such risk and no insurance on the face of it would underwrite such bad risks. The precautions and arrangements made by ECGC cannot be termed as arbitrary action. We hold that the inclusion of the name of the petitioners in the Specific Approval List does not amount to blacklisting and it is neither arbitrary, nor illegal and there is no violation of the principles of natural justice.

Under these circumstances, the common order dated 10.3.1999 passed by the learned Judge in W.P.No.4799 & 4800 of 1998 is set aside. Both the writ appeals are allowed. No costs.

kh

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Managing Director,
Export Credit Corporation Of India Ltd.,
Express Towers-10th Floor
Nariman Point, Mumbai 21.

2. The Branch Manager
State Bank of India
Marthandam
K.K. District.

3. The Branch Manager
Canara Bank
Kuzhithurai
Kanyakumari District.

+ 1 cc to Mr.R. Srinivasan, Advocate SR No.24058

SGL(CO)
SR/17.6.2006

Common Judgement in Writ Appeal Nos.717 & 718 of 1999.

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